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6 **IN THE UNITED STATES DISTRICT COURT**

7 **FOR THE DISTRICT OF ARIZONA**

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9 Jason Fritch,

10 Plaintiff,

11 v.

12 Orion Manufactured Housing Specialists
13 Incorporated, et al.,

14 Defendants.

No. CV-21-00509-TUC-JGZ (JR)

Order Re: Motion for Attorneys' Fees

15

16 Plaintiff's counsel successfully litigated this action to resolution, obtaining a

17 settlement for their client of \$7,500 in unpaid wages and penalties. Now pending before

18 the Court is Plaintiff's Motion for Attorneys' Fees and Costs, in which Plaintiff seeks

19 \$75,040 in attorneys' fees and \$1,818.23 in costs for the litigation. (Docs. 94 & 98.)

20 Defendants argue Plaintiff's attorneys' fees request is not reasonable and suggest the Court

21 should award fees of \$3,610.80. (Doc. 97.) Both parties detail their efforts to settle the

22 case in support of their positions. Settlement offers may be considered by the Court in

23 awarding fees. *See A.D. v. Cal. Highway Patrol*, 712 F.3d 446, 461 (9th Cir. 2013) ("[T]he

24 district court has the discretion (1) to consider the amounts discussed in settlement

25 negotiations, or not; and (2) to give those amounts as much or as little weight as it sees

26 fit.").

27 Upon review of the record, the Court concludes that Plaintiff's requested fee is

28 unreasonable. For the reasons stated in this Order, the Court will award Plaintiff \$25,000

1 in fees and \$1,752.75 in costs.

2 **I. Background**

3 On December 8, 2021, Plaintiff Jason Fritch filed a Complaint alleging Defendant
4 Orion Manufactured Housing Specialists Incorporated and Defendant L. James Miller
5 (Defendants) failed to pay him overtime wages in violation of the Fair Labor Standards
6 Act (FLSA), 29 U.S.C. § 207. (Doc. 1.) On January 6, Plaintiff filed an Application for
7 Entry of Default against Defendants (Doc. 7), and the Clerk entered default (Doc. 8), which
8 the parties later agreed to set aside (Doc. 9).

9 On January 7, 2022, before filing an Answer to the Complaint, Defendants' counsel
10 contacted Plaintiff's counsel, admitted Defendants' liability, and expressed a desire to
11 quickly settle the case. (Doc. 97-1 at 7¹.) Thereafter, the parties engaged in settlement
12 discussions via email.

13 On January 9, Plaintiff's counsel stated he had authority to settle the case for
14 \$13,000, inclusive of attorneys' fees and costs. (Doc. 97-1 at 6; Doc. 94-5 at 2.)

15 On Thursday, January 13, Defendants' counsel sent Plaintiff's counsel a spreadsheet
16 showing Defendants' calculations of hours worked, rate of pay, and liquidated damages,
17 for a total owed of \$4,549.75. (Doc. 97-1 at 5.) Defendants offered \$5,549.75 to settle the
18 action, the calculated amount of wages owed plus \$1,000 (presumably for costs and
19 attorneys' fees). (*Id.*) Defendants noted that Plaintiff did not appear to know how many
20 hours he had worked, his accurate rate of pay, or when his employment had ended, as the
21 allegations in his verified Complaint were inconsistent with Department of Economic
22 Security paperwork. (*Id.*)

23 Later that day, Plaintiff made a "last and final non-negotiable offer" of \$11,000 to
24 settle, stating Plaintiff was "not willing to take a penny less." (*Id.*) Plaintiff's counsel
25 specified that the offer would expire Monday, January 17, at noon and stated that he would
26 give a breakdown of attorneys' fees/costs and how much would go to his client if the offer
27 was accepted. (*Id.*)

28 ¹The page numbers referenced throughout this Order are the electronic page
numbers in the CM/ECF header of each document.

1 The next day, Friday, January 14, Defendants' counsel requested clarification about
2 the \$11,000 settlement offer, stating, "I don't know how I can analyze this offer without
3 knowing what [Plaintiff] claims he worked or what your attorneys' fees are." (*Id.* at 4.)
4 Counsel offered to send two checks to Plaintiff, one for unpaid overtime and one for
5 liquidated damages, and to talk about Plaintiff's attorneys' fees or moving the lawsuit
6 forward. (*Id.*)

7 Ten minutes later, Plaintiff's counsel replied, "My client rejects all tendered
8 payments and will not cash the checks. I have litigated this issue many times." (*Id.*)

9 In response, Defendants' counsel indicated he would call Plaintiff's counsel. (*Id.* at
10 3.) Further, Defendants' counsel reiterated that Defendants were willing to pay what they
11 understood to be owed to Plaintiff based on Defendants' records of hours worked, and also
12 to pay reasonable attorneys' fees and costs. (*Id.*) Defendants again noted that the verified
13 Complaint contained incorrect facts and expressed their doubt as to Plaintiff's truthfulness
14 about the hours he had worked based on Plaintiff's lack of records and statements that are
15 easily proved to be false. (*Id.*) Defendants also noted that Plaintiff had refused to provide
16 Defendants with his attorneys' fees and costs. (*Id.*) Defendants' counsel concluded, "If
17 we are correct as to what he is owed, I don't think a judge is going to award you any
18 additional fees or costs." (*Id.*)

19 Two minutes later, Plaintiff's counsel responded with one sentence: "So, are you
20 rejecting our offer?" (*Id.*)

21 It appears counsel spoke over the phone later that day. That afternoon, Defendants'
22 counsel sent Plaintiff's counsel an email asking him to confirm that the terms of the offer
23 were for Defendants to pay \$11,000 for Plaintiff's FLSA claims and attorneys' fees/costs
24 and that Plaintiff would not provide a breakdown of that number between FLSA claims
25 and attorneys' fees/costs, nor provide what Plaintiff believes he is owed for unpaid
26 overtime or how many hours of overtime Plaintiff claims he had worked. (*Id.* at 2.)

27 Plaintiff's counsel responded seven minutes later: "At this time, there is no offer on
28 the table from our side as Defendants have declined our non-negotiable final offer." (*Id.*)

1 Three days later, on January 17, 2022, Plaintiff amended his complaint and filed a
2 Collective Action Complaint for Compensation under the FLSA. (Doc. 11.) The next day,
3 Plaintiff filed a Motion for Conditional Certification. (Doc. 12.) Plaintiff proposed the
4 collective action consist of: “All persons who work[ed] for Defendants Orion
5 Manufactured Housing Specialists, Inc., and/or L. James Miller; who work[ed] over 40
6 hours in any given workweek as a past or present worker, and who only received straight
7 time for all hours worked over 40 in a given workweek.” (*Id.*) Defendants did not object
8 to the conditional certification, but did take issue with some aspects of Plaintiff’s proposed
9 notice. (Doc. 24.) Magistrate Judge Jacqueline Rateau issued a Report and
10 Recommendation (R&R) in which she recommended the Court conditionally certify the
11 class, but amend the proposed notice in several ways. (Doc. 38.) Neither Plaintiff nor
12 Defendants objected to the R&R.

13 On May 3, 2022, while the R&R was pending, Plaintiff made a new settlement offer
14 of \$7,500 to Plaintiff, plus either \$17,500 in attorneys’ fees or a motion for attorneys’ fees.
15 (Doc. 94-5 at 4.)

16 On May 18, 2022, this Court adopted the R&R in full, thus conditionally certifying
17 the class. (Doc. 43.)

18 On July 27, 2022, Plaintiff offered to settle the case for \$25,000, inclusive of
19 attorneys’ fees and costs. (Doc. 94-5 at 5.) At that point, the one person who had opted in
20 to the collective action had opted out (Docs. 44, 49, 50), and Magistrate Judge Rateau had
21 issued a R&R recommending the Court deny Plaintiff’s Motion to Toll the Statute of
22 Limitations (Docs. 35, 51).

23 On August 4, 2022, Defendants offered to settle the case for \$12,000 inclusive of
24 attorneys’ fees and costs. (Doc. 94-5 at 5.) Later that day, Plaintiff countered with an offer
25 of \$7,000 to Plaintiff and either \$19,000 in attorneys’ fees or a motion for attorneys’ fees.
26 (*Id.*)

27 On September 15, 2022, Plaintiff moved for summary judgment on the issue of
28 damages—the only issue in dispute in the lawsuit. (Doc. 67.) Magistrate Judge Rateau

1 issued a R&R recommending the Court deny Plaintiff's motion because there was a
2 genuine issue of material fact as to the hours of overtime Plaintiff had worked. (Doc. 78.)

3 On February 22, 2023, Defendants offered to settle the case for \$18,000, inclusive
4 of attorneys' fees and costs. (Doc. 94-5 at 7.) That same day, Plaintiff countered with a
5 demand for \$45,000, inclusive of fees and costs. (*Id.*)

6 On May 25, this Court adopted the R&R over Plaintiff's objection and concluded
7 "that the inconsistencies in Fritch's sworn statements preclude summary judgment"
8 because the "conflict between Fritch's sworn statements calls into question the
9 reasonableness of Fritch's most recent estimate of hours worked." (Doc. 87 at 5.) This
10 was the same issue raised by Defendants in their January 14 settlement discussions with
11 Plaintiff.

12 On June 1, the Court held a pretrial conference and set a three-day jury trial for
13 August 28, 2023, and other trial-related deadlines. (Docs. 88.)

14 On June 21, Plaintiff offered to settle the case for \$7,500 to Plaintiff and to have the
15 Court determine attorneys' fees and costs upon motion. (Doc. 94-5 at 8.) Defendants
16 accepted the offer (*id.*) and Plaintiff filed a Notice of Settlement (Doc. 90) indicating the
17 parties agreed that Plaintiff would receive \$7,500 "plus attorney fees and costs as will be
18 determined by the Court." (Docs. 92, 93.)

19 On July 11, Plaintiff offered to resolve the fees and costs by payment of \$40,000 in
20 attorneys' fees and \$1,818.23 in costs. (Doc. 94-5 at 8.) Apparently, Defendants rejected
21 the offer, and, on August 1, 2023, Plaintiff filed the instant Motion for Attorneys' Fees and
22 Costs (Doc. 94), seeking \$70,560 in attorneys' fees² and \$1,818.23 in costs. (Doc. 94.)

23 **II. Lodestar Calculation**

24 After a court concludes that a party is entitled to an award of attorneys' fees, it must
25 determine whether the fees requested are reasonable by using the lodestar method. *See*
26 *Staton v. Boeing Co.*, 327 F.3d 938, 965–66 (9th Cir. 2003). This method involves a two-
27 step process. *Kelly v. Wengler*, 822 F.3d 1085, 1099 (9th Cir. 2016). First, the court

28 ²In their Reply, Plaintiffs sought an additional \$4,480 for time spent preparing the
reply to Defendants' Response to the Motion for Attorneys' Fees. (Doc. 98.)

1 multiplies the reasonable hourly rate by the number of hours reasonably expended. *Id.*; see
 2 *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983) (“The most useful starting point for
 3 determining the amount of a reasonable fee is the number of hours reasonably expended
 4 on the litigation multiplied by a reasonable hourly rate.”). “This figure, called the
 5 ‘lodestar,’ is presumptively reasonable.” *Grabda v. IMS Acquisition LLC*, No. CV-20-
 6 00117-TUC-MSA, 2020 WL 6680378, at *1 (D. Ariz. Nov. 12, 2020) (citation omitted).
 7 A reasonable hourly rate is generally the prevailing market rate in the relevant community.
 8 *Kelly*, 822 F.3d at 1099. The actual rate an attorney charges is itself highly relevant proof
 9 of the prevailing community rate. *See Elser v. I.A.M. Nat. Pension Fund*, 579 F. Supp.
 10 1375, 1379 (C.D. Cal. 1984). Second, the Court “determines whether to modify the
 11 lodestar figure, upward or downward, based on factors not subsumed in the lodestar
 12 figure.” *Kelly*, 822 F.3d at 1099.

13 “In calculating the lodestar, district courts ‘have a *duty* to ensure that claims for
 14 attorneys’ fees are reasonable,’ and a district court does not discharge that duty simply by
 15 taking at face value the word of the prevailing party’s lawyer for the number of hours
 16 expended on the case.” *Vogel v. Harbor Plaza Ctr., LLC*, 893 F.3d 1152, 1160 (9th Cir.
 17 2018) (citations omitted) (emphasis in original). Rather, a district court must ensure the
 18 prevailing attorneys have exercised “billing judgment.” *Id.* “The district court also should
 19 exclude from this initial fee calculation hours that were not ‘reasonably expended.’”
 20 *Hensley*, 461 U.S. at 434 (internal citation omitted). Further, “[c]ounsel for the prevailing
 21 party should make a good faith effort to exclude from a fee request hours that are excessive,
 22 redundant, or otherwise unnecessary,” as hours “that are not properly billed to one’s client
 23 also are not properly billed to one’s adversary.” *Id.* A district court has discretion to
 24 determine the amount of a fee award and although it is important for the court to “provide
 25 a concise but clear explanation of its reasons for the fee award,” *id.* at 437, it “is not required
 26 to set forth an hour-by-hour analysis of the fee request,” *Gates v. Deukmejian*, 987 F.2d
 27 1392, 1399 (9th Cir. 1992).

28 Local Rule of Civil Procedure 54.2(c)(3) provides a list of factors to be considered

1 in assessing the reasonableness of a requested attorneys' fee award:

- 2 (A) The time and labor required of counsel;
- 3 (B) The novelty and difficulty of the questions presented;
- 4 (C) The skill requisite to perform the legal service properly;
- 5 (D) The preclusion of other employment by counsel because of
- 6 the acceptance of the action;
- 7 (E) The customary fee charged in matters of the type involved;
- 8 (F) Whether the fee contracted between the attorney and the
- 9 client is fixed or contingent;
- 10 (G) Any time limitations imposed by the client or the
- 11 circumstances;
- 12 (H) The amount of money, or the value of the rights, involved,
- 13 and the results obtained;
- 14 (I) The experience, reputation and ability of counsel;
- 15 (J) The "undesirability" of the case;
- 16 (K) The nature and length of the professional relationship
- 17 between the attorney and the client;
- 18 (L) Awards in similar actions; and
- 19 (M) Any other matters deemed appropriate under the
- 20 circumstances.

21 LRCiv 54.2(c)(3); *see also Hensley*, 461 U.S. at 430, n.3; *Kerr v. Screen Extras Guild, Inc.*,
 22 526 F.2d 67 (9th Cir. 1975) (acknowledging factors useful in evaluating reasonableness of
 23 attorneys' fees), *abrogated on other grounds by City of Burlington v. Dague*, 505 U.S. 557
 24 (1992).

25 **III. Application**

26 Plaintiff requests \$75,040 in attorneys' fees and \$1,818.23 in costs in accordance
 27 with Federal Rule of Civil Procedure 54(d), Local Rule of Civil Procedure 54.2, and 29
 28 U.S.C. § 216(b), the FLSA fee-shifting statute which "provides for attorney fees and costs
 to a successful plaintiff." *Haworth v. State of Nev.*, 56 F.3d 1048, 1050 n.1 (9th Cir. 1995).
 The parties agree that Plaintiff was successful and is entitled to reasonable attorneys' fees
 and costs.

29 **A. Reasonableness of Rate**

30 Jason Barrat's hourly rate billed in this case is \$400, Kelsey Whalen's is \$335,
 31 James Weiler's is \$400, and Jessica Miller's is \$400. (Doc. 94-5 at 8.) Defendants do not

1 challenge the reasonableness of these rates and the Court finds they are reasonable based
2 on each attorney's qualifications and experience, and the prevailing rates for attorneys with
3 similar years' experience in Tucson, Arizona.

4 B. Reasonableness of Hours Expended

5 According to Plaintiff's counsel's timesheet and Reply, counsel spent a total of
6 177.7 hours on this case, with Jason Barrat billing 115 hours, Kelsey Whalen – 8, James
7 Weiler – 9.4, and Jessica Miller – 45.3 hours. (Doc. 94-5 at 8.) Defendants assert, and this
8 Court agrees, that the number of hours billed is not reasonable and certain tasks performed
9 by Plaintiff's counsel are not compensable. This was a straightforward FLSA case in which
10 Defendants admitted liability to Plaintiff before filing an answer. As of January 13, 2022,
11 the only issue to be resolved was how much Defendants owed Plaintiff for the FLSA
12 violation and attorneys' fees. Based on settlement discussions at that time, the amount due
13 to Plaintiff was, at the most, \$11,000. However, Plaintiff refused to provide any
14 explanation of his request for \$11,000, or to clarify what portion of the request constituted
15 attorneys' fees and costs. When Defendants persisted in seeking an explanation, Plaintiff
16 withdrew the settlement offer and pursued a course of litigation that increased costs
17 unnecessarily. Plaintiff staffed the case with four lawyers³ and engaged in a robust
18 discovery and motions practice that did not advance resolution of the case. And, while it
19 is true that Defendants could have tendered the total amount of wages Plaintiff claimed
20 was due to him, Plaintiff did not make that amount known until May 3, 2022. Moreover,
21 Defendants had every reason to ask Plaintiff to explain the basis for his earlier wage claims
22 in light of Plaintiff's erroneous allegations in the Complaint regarding the dates of his
23 employment and his hourly rate of pay. The Court acknowledges that Defendants put
24 themselves at risk by destroying timecards in the first instance. But Defendants'
25 misconduct does not justify Plaintiff's employ of excessive and unnecessary resources or

26
27 ³Plaintiff is correct that there is nothing inherently unreasonable about a client
28 having multiple attorneys. (Doc. 98 at 11.) However, given the straightforward issues
presented in this case, the Court finds unreasonable the number of attorneys involved in
light of the work performed, the tasks billed, and the duplicative nature of the attorneys'
work.

1 Plaintiff's refusal to explain his wage calculation. If anything, Defendants' misconduct
 2 simplified the work Plaintiff had to do to prove his case by shifting the burden of proof.
 3 Unfortunately, in evaluating the case, Plaintiff's counsel failed to acknowledge Plaintiff's
 4 mistaken claims about his term of employment and rate of pay, and a case that should have
 5 been resolved early on, continued for eighteen additional months.

6 *1. Review of Own Filings*

7 Looking to the specifics of Plaintiff's claims for attorney compensation, the Court,
 8 on its own review, has identified several entries of non-billable activity. Barrat has billed
 9 for reviewing Plaintiff's own Complaint, summons, and service documents in the
 10 electronic docket (Docs. 1–4, 5–6, 8), the Court's one-page order assigning this case to
 11 Magistrate Judge Rateau (Doc. 14), documents not in the record (Docs. 18–19), text-only
 12 orders regarding magistrate jurisdiction and reassignment to this Court (Docs. 20–22), the
 13 Court's one-page order referring the case to Magistrate Judge Rateau (Doc. 23), Plaintiff's
 14 own notice of service of discovery (Doc. 31), counsel's own notices of appearance for
 15 Kelsey Whalen (Doc. 61), James Weiler (Doc. 62), and Jessica Miller (Doc. 81), and the
 16 Court's one-page order granting a joint Motion for Extension that Plaintiff's counsel filed
 17 (Doc. 80). The Court will exclude the 1.4 hours billed in these entries. *See Barbee v.*
 18 *DNSPWR2 LLC, et al.*, No. 3:20-cv-08100-MTM (Nov. 16, 2020) (Doc. 19) (“[R]eviewing
 19 Plaintiff's own filings in the Court's electronic filing system or reading the Clerk of Court's
 20 one-page default judgment entry—do not require an experienced attorney or support staff
 21 to perform, and are therefore not recoverable in a fee award.”); *see also Gary v. Carbon*
 22 *Cycle Ariz. LLC*, 398 F. Supp. 3d 468, 487 (D. Ariz. 2019) (collecting cases).

23 *2. Clerical and Non-Lawyer Tasks*

24 Counsel has included clerical activities that the Court finds are not recoverable in a
 25 fee award. Barrat billed 0.1 hours for reviewing the call-in information for a telephonic
 26 scheduling conference. (Doc. 94-5 at 3.) This is plainly clerical. Counsel also billed 0.2
 27 hours for “Review[ing] dkt 50 email from AZDdb_QA Staff RE incorrect event selected.”
 28 (*Id.* at 5.) That is, it appears counsel is attempting to recover fees for the time spent to

1 correct counsel's own mistake in selecting the incorrect event when filing Plaintiff's
 2 Motion to Withdraw Opt-In Consent Form for Dakota Ressenger. (Doc. 49.) Counsel
 3 billed 0.2 hours for drafting "notice of change of name of firm" and 0.2 hours for drafting
 4 "firm name change letter to [P]laintiff." (Doc. 94-5 at 7.) Lastly, counsel billed 0.3 hours
 5 for "FOIA Request records from AZ industrial commission and labor board," 1.3 hours for
 6 researching "programs/application to track your iPhone for client to produce those
 7 records," and 0.4 hours for researching Defendants on BeenVerified.com. (*Id.* at 2, 3, 6.)
 8 These are paralegal or other non-lawyer tasks and should not have been billed at an attorney
 9 rate. *See Gary*, 398 F. Supp. 3d at 487 ("Attorneys' fees should not be given for the
 10 performance of administrative tasks which could and should be performed by secretarial
 11 or paralegal staff." (internal citation omitted)). The Court will exclude the 2.7 hours these
 12 entries total, which, at Barrat's rate, amounts to \$1,080.

13 *3. Vague, Block-Billed, and Other Unreasonable Entries*

14 Local Rule 54.2(e)(2) provides that a party seeking a fee award "must adequately
 15 describe the services rendered so that the reasonableness of the charge can be evaluated. . . .
 16 If the time descriptions are incomplete, or if such descriptions fail to adequately describe
 17 the service rendered, the court may reduce the award accordingly." The rule provides
 18 specific examples and explains that a "legal research" entry "must identify the specific
 19 legal issue researched and, if appropriate, should identify the pleading or document the
 20 preparation of which occasioned the conduct of the research." LRCiv 54.2(e)(2)(B).
 21 Several entries in the timesheet are either too vague to evaluate for reasonableness, are
 22 block-billed, or are unreasonable:

- 23 • Barrat billed 1.4 hours on 2/22/2022 for "Draft disclosure statement, first
 24 [non-uniform interrogatories] and [requests for production]" (Doc. 94-5 at
 25 3);
- 26 • Barrat billed 1.5 hours on 4/15/2022 for "Draft stipulation as to the elements
 27 of claims and research discovery caselaw" (*id.* at 3);
- 28 • Barrat billed 1.5 hours on 7/13/2022 for "Review [Report &

Recommendation recommending denial of Plaintiff’s motion to toll statute of limitations], analyze and research if Plaintiff should object to the report and recommendation” (*id.* at 5);

- Barrat billed 0.6 hours on 7/26–7/27/2022 for “Exchange emails with client and A. Peschke RE settlement, deposition; review check docs for settlement purposes” (*id.* at 5);
- Whalen billed 1.0 hour on 8/23/2022 for “Review discovery, file” (*id.* at 6);
- Barrat billed 29.8 hours for drafting the motion for summary judgment, statement of facts, and the reply,⁴ reviewing emails related to the motion, and entries related to Defendants’ response to the motion. (*Id.* at 6.) Barrat (2.9), Weiler (1.5), and Miller (38.2) billed a total of 42.6 hours for reviewing and objecting to the R&R on the motion. (*Id.* at 7.) Work performed in relation to the motion for summary judgment was unreasonable given the clear dispute of material fact and Plaintiff’s inconsistent statements on the one issue in dispute—damages.⁵
- Barrat billed 0.3 hours on 2/20/2023 for “Exchange emails with J. Miller RE documents” (*id.* at 7);
- Miller billed 1.2 hours on 6/11/2023 for “Reviewing Answer, research affirmative defenses” (*id.* at 8); and
- Miller billed 3.4 hours on 6/12/2023 for “Populating all admissions/denials from MSJ, Answer and RFAs, arranging for JPS, reviewing documentary evidence, including two exhibits, reviewing witnesses” (*id.* at 8).

⁴Barrat billed a total of 4.9 hours between October 24 and October 25, 2022 for drafting and “finaliz[ing]” the Reply in Support of Motion for Summary Judgment, which was less than three full pages. (Doc. 94-5 at 6.) This billing is also unreasonable and excessive considering the content and length of the filing and counsel’s 11-years’ experience litigating plaintiff wage and hour disputes. (Doc. 94-1 ¶¶ 3, 7.) For similar reasons, it was excessive to spend more than 40 hours reviewing and preparing an objection to the R&R on the motion for summary judgment.

⁵Although the Court declines to adopt Defendants’ request to exclude all entries billed for “unsuccessful” motions, the Court concludes that Defendants should not be required to pay for motions that lacked a reasonable basis. Summary judgment is not appropriate where there is a disputed issue of fact.

1 The descriptions in these entries are either too vague, block-billed such that the Court
 2 cannot evaluate the reasonableness of each of the tasks charged, or unreasonable. The
 3 Court will exclude these entries which total 83.3 hours, or \$33,255: 38 hours for Barrat
 4 (\$15,200), 42.8 for Miller (\$17,120), 1.0 for Whalen (\$335), and 1.5 for Weiler (\$600).

5 The Court also will reduce the hours billed for drafting Plaintiff's Motion to Toll
 6 Statute of Limitations (Doc. 35). Barrat billed 1.9 hours between 2/4/2022 and 4/25/2022
 7 for drafting and finalizing the Motion. (Doc. 94-5 at 2–3.) The Motion is less than 1.5
 8 pages and the content is nearly identical to a previous motion filed by counsel in a different
 9 FLSA case. (*Compare* Doc. 35 with Doc. 43 in *Scales v. Information Strategy Design,*
 10 *Inc.*, No. 2:18-cv-00087-DLR.) The Court concludes that 1.0 hour would be a reasonable
 11 amount of time to draft Plaintiff's Motion to Toll Statute of Limitations; thus, the Court
 12 will reduce the hours for this entry by 0.9 hours, or \$360.

13 Defendants also argue Plaintiff's counsel over-staffed depositions. Given the
 14 straightforward nature of the case, Defendants' admission of liability at the outset of the
 15 case, and that the only issue to be determined was the number of hours Plaintiff had worked,
 16 the Court agrees that Weiler's appearances at the Brown and Gutierrez depositions on
 17 September 1, 2022, are duplicative and excessive, as was Weiler's preparation for such
 18 depositions on August 31, 2022. (Doc. 94-5 at 6.) Therefore, the Court will exclude 2.6
 19 hours, or \$1,040.

20 Excluding and reducing the above entries, which were vague, block-billed, or
 21 unreasonable, results in a reduction of 86.8 hours, or \$34,655. *See Hensley*, 461 U.S. at
 22 434 (excluding hours not reasonably expended).

23 C. Total Lodestar Award

24 The above exclusions and reductions total 90.9 hours, or \$36,295. Having
 25 determined the reasonable rates and reasonable hours expended by Plaintiff's counsel, the
 26 Court concludes the lodestar is \$34,265 based on 86.8 hours.

27 D. Lodestar Adjustment and Final Fee Calculation

28 "Although in most cases, the lodestar figure is presumptively a reasonable fee

1 award, the district court may, if circumstances warrant, adjust the lodestar to account for
2 other factors which are not subsumed within it.” *Ferland v. Conrad Credit Corp.*, 244 F.3d
3 1145, 1149 (9th Cir. 2001). “Thus, courts may also consider the factors listed in LRCiv
4 54.2(c)(3) when determining the reasonableness of an attorneys’ fee request.” *Gary*, 398
5 F. Supp. 3d at 491. Many of these factors have already been considered in the lodestar
6 analysis. For example, the time and labor required by counsel, LRCiv 54.2(c)(3)(A), was
7 considered in analyzing the reasonableness of the hours billed. Four other factors are
8 subsumed in evaluating the reasonableness of counsel’s rate, including: the skill requisite
9 to perform the legal service properly; the customary fee charged in this type of case; the
10 experience, reputation, and ability of counsel; and the undesirability of the case. *See* LRCiv
11 54.2(c)(3)(C), (E), (I), (J). As to the other factors, Plaintiff’s attorneys do not assert they
12 were precluded from other employment due to acceptance of this case, or that there were
13 any time limitations imposed by the client or the circumstances. *See* LRCiv 54.2(c)(3)(D),
14 (G). Counsel has not previously represented Plaintiff. *See* LRCiv 54.2(c)(3)(K).

15 Plaintiff acknowledges the single overtime claim at issue here was
16 “straightforward” and was not novel, LRCiv 54.2(c)(3)(B), but argues: “Defendants’
17 destruction of documents including timecards, lack of production of requested documents
18 and information, and lack of willingness to settle forced Plaintiff to litigate this for over 20
19 months and was very time consuming.” (*Id.*) Plaintiff asserts FLSA cases are
20 “traditionally accepted on a contingency fee basis,” which is what happened here. *See*
21 LRCiv 54.2(c)(3)(F). Plaintiff agreed to pay his attorneys either “40% of the gross amount
22 collected” or “[a]n award or settlement payment specifically designated for attorneys’ fees
23 and costs”—whichever is greater. (Doc. 94-7 at 3.) None of these factors warrant an
24 adjustment of the lodestar amount. Moreover, the Court rejects Plaintiff’s suggestion that
25 Defendants’ destruction of documents and unwillingness to settle was the cause of this
26 protracted litigation.

27 Plaintiff’s counsel points to two cases in which they assert courts have granted
28 similar awards: *Zuniga v. Fiesta Pediatric Therapy Inc.*, CV-15-1978-PHX-DKD, and

1 *Thompson v. Arizona Movers & Storage Inc.*, No. CV-17-03819-PHX-DGC, 2018 WL
2 2416187, at *3 (D. Ariz. May 29, 2018). *See* LRCiv 54.2(c)(3)(L). In *Zuniga*, the fee
3 award was 20.9 times as much as the damages recovered for the plaintiff. No. CV-15-
4 1978-PHX-DKD (Docs. 186, 199). In *Thompson*, the parties settled the case for \$1,503.57
5 in unpaid wages and damages under the FLSA, and the court awarded \$11,362.50 in
6 attorneys' fees, after excluding several hours as unreasonable. 2018 WL 2416187.
7 Although the fee award was 7.6 times higher than the plaintiff's settlement, the court found
8 it was not excessive because counsel had "successfully recovered Plaintiff's full
9 compensatory and statutory damages, and much of counsel's efforts could have been
10 avoided had Defendants responded to the initial demand letter or accepted Plaintiff's offer
11 to settle the fees for a significantly lower amount." *Id.* at *3. These cases are
12 distinguishable. First, in *Zuniga*, the award came after a bench trial and almost three years
13 of litigation involving many motions. Second, in *Thompson*, the court found the fee was
14 not excessive because the case could have settled earlier and counsel's efforts could have
15 been avoided but for defendants' actions. Here, however, the record shows much of
16 Plaintiff's counsel's efforts could have been avoided if counsel had responded to
17 Defendants' counsel's clarification request or had been reasonable in initial settlement
18 discussions. In addition, although Plaintiff had the right to pursue his claims, counsel's
19 efforts were excessive and unreasonable given what was disputed and what was not
20 disputed in the case.

21 As to the remaining factors, the Court concludes that the amount of damages at stake
22 and the results obtained, as well as counsel's conduct during initial settlement discussions
23 warrant an adjustment. *See* LRCiv 54.2(c)(3)(H), (M). The Court has detailed the
24 progression of this litigation in this Order. The Court notes that Plaintiff received \$7,500
25 in damages as the result of the June 21, 2023, settlement. This was approximately \$3,000
26 more than Defendants had offered to pay Plaintiff for his wages in January 2022, at the
27 beginning of this case, when only the Complaint had been filed. At that time, Defendants
28 had admitted liability and appeared willing to settle the case for the amount Plaintiff was

1 owed for unpaid overtime. Plaintiff would not provide a calculation to justify his demand
 2 for wages greater than what Defendant had offered to pay. An award of \$25,000 takes into
 3 account that Plaintiff first made known a specific demand for wages on May 3, 2022,
 4 demanding \$7,500 in wages and \$17,500 in attorney's fees.

5 The Court acknowledges that there are instances where plaintiff's counsel has no
 6 reasonable choice but to vigorously litigate in order to obtain fair and complete
 7 compensation for a client who is owed FLSA wages. This case, however, was not one of
 8 those instances.

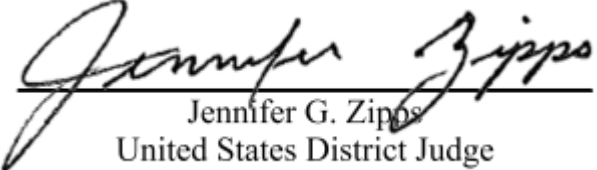
9 **IV. Conclusion**

10 For the foregoing reasons, the Court grants the Motion for Attorneys' Fees and
 11 Costs to the extent the Court will award Plaintiff \$25,000.00 in attorneys' fees and
 12 \$1,752.75⁶ in costs.

13 **IT IS ORDERED** Plaintiff's Motion for Attorneys' Fees and Costs (Doc. 94) is
 14 **GRANTED** to the extent the Court grants Plaintiff \$25,000.00 for attorneys' fees and
 15 \$1,752.75 for costs; the Motion is denied in all other respects.

16 **IT IS FURTHER ORDERED** the Clerk of Court shall enter judgment and close
 17 this action.

18 Dated this 19th day of December, 2023.

19
 20
 21 
 22 Jennifer G. Zippo
 23 United States District Judge
 24
 25
 26
 27

28 ⁶The Court will also exclude \$65.48 of Plaintiff's costs associated with the motion
 for summary judgment. (Doc. 94-8 at 2.)